

ASSEMBLY BILL

No. 1902

Introduced by Assembly Member Villines

January 25, 2006

An act to amend Section 3154 of the Civil Code, relating to mechanics' liens.

LEGISLATIVE COUNSEL'S DIGEST

AB 1902, as introduced, Villines. Mechanics' liens: release of property: attorney's fees.

The California Constitution gives workers the right to a mechanics' lien for the value of labor and materials provided for the improvement of real property.

Existing law provides that where no action has been brought to enforce a claim of lien, as specified, the owner of the property or the owner of interest therein may petition the court for a decree to release the property from the lien. Existing law allows the prevailing party to recover attorney's fees, not to exceed \$2,000.

This bill would delete that \$2,000 limitation.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3154 of the Civil Code is amended to
2 read:
3 3154. (a) At any time after the expiration of the time period
4 specified by Section 3144 with regard to the period during which
5 property is bound by a lien after recordation of a claim of lien,
6 where no action has been brought to enforce that lien, the owner

1 of the property or the owner of any interest therein may petition
2 the proper court for a decree to release the property from the lien.

3 (b) The petition shall be verified and shall allege all of the
4 following:

5 (1) The date of recordation of the claim of lien.

6 (2) The legal description of the property affected by the claim
7 of lien.

8 (3) That no action to foreclose the lien is pending, or that no
9 extension of credit has been recorded, and that the time period
10 during which suit can be brought to foreclose the lien has expired.

11 (4) That the lien claimant is unable or unwilling to execute a
12 release of the lien or cannot with reasonable diligence be found.

13 (5) That the owner of the property or interest in the property
14 has not filed for relief under any law governing bankruptcy, and
15 that there exists no other restraint to prevent the lien claimant from
16 filing to foreclose his or her lien. A certified copy of the claim of
17 lien shall be attached to the petition. The petition shall be deemed
18 controverted by the lien claimant.

19 (c) Upon the filing of the petition, and before any further
20 proceedings are had, the clerk, or if there is no clerk, the judge
21 shall set a date for the hearing not more than 30 days following
22 the filing of the petition. The court may continue the hearing
23 beyond the 30-day period, but good cause shall be shown for any
24 continuance.

25 (d) A copy of the petition and the notice setting the date for the
26 hearing shall be served upon the lien claimant at least 10 days prior
27 to the date set for hearing, in the manner in which a summons is
28 required to be served, or by certified or registered mail, postage
29 prepaid, return receipt requested, addressed to the lien claimant at
30 the claimant's address as shown on any of the following:

31 (1) The preliminary 20-day notice served by the claimant
32 pursuant to Section 3097.

33 (2) In the records of the registrar of contractors.

34 (3) The contract on which the lien is based.

35 (4) The claim of lien itself.

36 (e) When service is made by mail as provided in this section,
37 service is complete on the fifth day following the day of the deposit
38 of the mail. No decree shall issue in favor of the petitioner unless
39 the petitioner proves that service of the petition and the order fixing
40 the date for hearing was made in compliance with this subdivision.

1 The issue of compliance with this subdivision shall be deemed
2 controverted by the lien claimant.

3 (f) In the event judgment is rendered in favor of the petitioner,
4 the decree shall indicate all of the following:

5 (1) The date the lien was recorded.

6 (2) The county and city, if any, in which the lien was recorded.

7 (3) The book and page of the place in the official records where
8 the lien is recorded.

9 (4) The legal description of the property affected. Upon the
10 recordation of a certified copy of the decree, the property described
11 in the decree shall be released from the lien.

12 (g) The prevailing party shall be entitled to ~~attorneys' attorney's~~
13 ~~fees not to exceed two thousand dollars (\$2,000).~~

14 (h) Nothing in this section shall be construed to bar any other
15 cause of action or claim for relief by the owner of the property or
16 an interest in the property, nor shall a decree canceling a claimant's
17 lien bar the lien claimant from bringing any other cause of action
18 or claim for relief, other than an action foreclosing the lien.
19 However, no other action or claim shall be joined with the claim
20 for relief established by this section.

21 (i) The provisions of Chapter 2.5 (commencing with Section
22 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure do not
23 apply to causes commenced pursuant to this section.